

1 **James M. Dore - State Bar No. 343860**
2 JUSTICIA LABORAL, LLC
3 6232 N. Pulaski Rd. Suite 300, Chicago, IL 60646
4 P: (773) 415-4898; E: jdore@justicialaboral.com
5 *Attorneys for Plaintiff*
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9

10 OSCAR RENE ORELLANA IZAGUIRRE,
11

Case No: 3:23-cv-316

12
13
14 Plaintiff,

Complaint for Declaratory Relief and
Monetary Damages for Violations of: (1)
FLSA 29 CFR 778.223 (2) Cal. Labor Code -
Overtime Wages; (2) Cal. Wage Order 7 (3)
Cal. Labor Code - Waiting Time Penalties;
(4) Cal. Unfair Competition Law Violations;
(5) Cal. Labor Code - Rest and Lunch Break
Violations; and (6) Cal. Labor Code - Wage
Statement Violations (7) Cal. Labor Code
28.63

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24 PROSPER BUILDERS, INC.,
25 QUOC K. TRUONG AND
26 THAI TRUONG
27 ,

28 DEMAND FOR JURY TRIAL
29

30 Defendants.
31

32 **NATURE OF THIS ACTION**
33

34 1. This is an action for relief from Defendants' PROSPER BUILDERS, INC. ("Defendant"
35 or "Prosper"), QUOCK K. TRUONG ("Defendant" or "QUOC"), and THAI TRUONG
36 ("Defendant" or "Thai") violations of Plaintiff OSCAR RENE ORELLANA IZAGUIRRE's
37 ("Plaintiff") workplace rights. Prosper and Truong may collectively be referred to as Defendants.
38 Defendants violated state wage and hour laws, against Plaintiff.
39

40 2. This is an action brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), 29
41 U.S.C. § 201, *et seq.*, California Labor Code, and the Unfair Competition Law, to obtain relief for
42 Plaintiff.
43

44 3. This action is brought by Plaintiff to secure declaratory relief and damages to remedy
45 Defendants' violations of federal, state, and local employment laws by failing to adequately
46 compensate Plaintiff for the hours he worked, and to secure declaratory, compensatory, and
47 punitive damages under federal and state employment laws.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, and Section 16(b) of the FLSA.

5. This Court has supplemental jurisdiction over the related state law and local ordinance claims pursuant to 28 U.S.C. § 1367(a) because Plaintiff's claims under the California Labor Code, and the Unfair Competition Law, form part of the same case or controversy under Article III of the United States Constitution. Plaintiff's state law claims share all common operative facts with her/his federal law claims, and the parties are identical. Resolving all state and federal claims in a single action serves the interests of judicial economy, convenience, and fairness to the parties.

6. Pursuant to 28 U.S.C. § 1391(b) and Civil Local Rule 3-2(d), venue is proper in the Northern District of California because Plaintiff resides in this District, Defendants reside in and employed Plaintiff in this District, and the unlawful employment practices alleged herein giving rise to Plaintiff's claims occurred in this District.

PARTIES

7. Plaintiff OSCAR RENE ORELLANA IZAGUIRRE is a current resident of San Jose, California.

8. Defendants Prosper is a business in the state of California. It provides construction and landscaping services for commercial and residential properties. At all times relevant herein Defendants were Plaintiff's employer covered by the FLSA, the California Labor Code Industrial Welfare Commission Wage Order 5 ("Wage Order 5"), and Industrial Welfare Commission Minimum Wage Order MW-2007 ("General Minimum Wage Order").

9. Defendant QUOC K. TRUONG is, on information and belief, an adult resident of San Jose, California. Defendant QUOC K. TRUONG was, during the relevant time period, a member and/or manager and/or Chief Executive Officer of Defendant Prosper. At all times relevant herein Defendant Prosper was Plaintiff's employer covered by the FLSA, California Labor Code, Wage Order 5, General Minimum Wage Order. Plaintiff is informed and believes that Defendant QUOC K. TRUONG is a joint employer, working as a joint enterprise with and/or the alter ego of Entity Defendants. Defendant QUOC K. TRUONG controls and is intimately involved in the day-to-day operations of Entity Defendants and both determined and instituted the unlawful wage and hour violations alleged herein. Defendant QUOC K. TRUONG has violated or caused to be violated the provisions of Wage Order 5 regulating minimum wages and/or hours and days of work as well as Labor Code §§ 203, 226, and 1194. As such, he is personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor Code § 558.1.

10. Defendant THAI TRUONG is, on information and belief, an adult resident of San Jose, California. Defendant THAI TRUONG was, during the relevant time period, a member and/or manager and/or Chief Executive Officer of Defendant Prosper. At all times relevant herein Defendant Prosper was Plaintiff's employer covered by the FLSA, California Labor Code, Wage Order 5, General Minimum Wage Order. Plaintiff is informed and believes that Defendant THAI

95 TRUONG is a joint employer, working as a joint enterprise with and/or the alter ego of Entity
 96 Defendants. Defendant THAI TRUONG controls and is intimately involved in the day-to- day
 97 operations of Entity Defendants and both determined and instituted the unlawful wage and hour
 98 violations alleged herein. Defendant THAI TRUONG has violated or caused to be violated the
 99 provisions of Wage Order 5 regulating minimum wages and/or hours and days of work as well
 100 as Labor Code §§ 203, 226, and 1194. As such, he is personally liable for the Wage Order and
 101 Labor Code violations cited above pursuant to Labor Code § 558.1.
 102

103 11. Plaintiff is informed and believes, and thereon alleges, that Defendants each acting as
 104 agents and/or employers and/or under the direction and control of each of the other Defendants,
 105 and that said acts and failures to act were within the course and scope of said agency, employment
 106 and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all
 107 times material hereto Defendants were and are agents of each other.
 108

109 STATEMENT OF FACTS

110
 111 12. Plaintiff worked for Defendants as a driver and general laborer from approximately
 112 July 2022 to September 15, 2022.
 113

114 13. When Defendants hired Plaintiff, Defendants did not present or require Plaintiff to
 115 sign an employment contract.
 116

117 14. Defendant QUOC K. TRUONG was Plaintiff's supervisor throughout the entirety of
 118 his employment.
 119

120 15. Defendant THAI TRUONG was Plaintiff's supervisor throughout the entirety of his
 121 employment.
 122

123 16. During his employment, despite working approximately ten (10) hours per day, seven
 124 (7) days per week, Plaintiff was not paid the minimum wages required by law including cash
 125 wages, for the hours he worked.
 126

127 17. Defendants required Plaintiff, a non-exempt employee, to work at rates, that are below
 128 the state and federal minimum wage.
 129

130 18. Defendants willfully, intentionally, and with reckless disregard denied Plaintiff all the
 131 wages to which s/he was entitled under the FLSA, state law, and/or any local ordinance.
 132

133 FIRST CLAIM FOR RELIEF

134 Failure to Pay Minimum Wage for Overtime Hours in Violation of FLSA

135
 136 19. The allegations of each of the preceding paragraphs are realleged and incorporated
 137 herein by reference.
 138

139 20. The FLSA applied to Plaintiff's employment with Defendants at all times relevant
 140 herein.
 141

21. Section 206 of the FLSA, 29 U.S.C. § 206(a)(1)(C), mandates that employers pay all employees engaged in commerce or in the production of goods for commerce, minimum wages for their work in an amount set by federal law. Section 218 of the FLSA, 29 U.S.C. § 218(a), provides that employers pay such minimum wages as established by state law, should it be higher than the federal minimum. During the relevant time period the federal minimum wage was \$7.25.

22. For a substantial time during his employment, Plaintiff was not paid the required minimum Wages. Defendants failed to maintain proper and accurate records as mandated by the FLSA. Upon information and belief, Defendants have not preserved any records of Plaintiff's wage calculations showing deductions from wages paid on a weekly basis.

23. Plaintiff began working for Defendants in or before July 15, 2022, until September 15, 2022.

24. At all times, Plaintiff was a driver and performed general labor for Defendants. Plaintiff was an "employee" of Defendants at the term is used in Section 203 of the FLSA because he was employed by Defendants to perform general labor; s/he does not fall within any of the exceptions of workers in the FLSA.

25. Although schedules are subject to change, Plaintiff's general schedule with Defendants Required Plaintiff to work 70 hours per week.

26. Plaintiff was paid his wages on a daily basis; he was paid \$1,200.00 per week, or \$17.14 per hour until the end of his employment.

27. Plaintiff's wages were not paid based on the number of jobs performed or completes, nor was it based on the quality of efficiency of his performance.

28. Throughout the course of Plaintiff's employment with Defendants, Defendants regularly scheduled and directed Plaintiff to work over forty (40) hours per week.

29. Defendants willfully, intentionally, and with reckless disregard failed to pay Plaintiff the minimum wage for all his/her hours worked in violation of the FLSA.

30. Because of Defendants' unlawful failure and refusal to pay Plaintiff minimum wages, Plaintiff is entitled, pursuant to § 216(b) of the FLSA, 29 U.S.C. § 216(b), to recover her unpaid minimum wages, including interest and liquidated damages thereon, in amounts to be proven at trial, as well as reasonable attorney's fees and costs.

31. Plaintiff is entitled to recover unpaid minimum wages and liquidated damages for the 3 Years Prior to filing of this lawsuit. On information and belief, this amount includes: (i) \$2,056.80 in unpaid minimum overtime wages; (ii) liquidated damages of \$2,056.80; and (iii) Plaintiff's attorney's Fees and costs, to be determined.

SECOND CLAIM FOR RELIEF

Violation of Cal. Lab. Code 1194 and Wage Order 5 - Failure to Pay Overtime Wages

189
190 32. The allegations of each of the preceding paragraphs are realleged and incorporated
191 herein by reference.

192
193 33. California Labor Code Section 1194(a) provides:
194

195 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
196 legal minimum wage or the legal overtime compensation applicable to the employee is entitled
197 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
198 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”
199

200 Further, Wage Order 5, Section 3(A)(1) provides:
201

202 “The following overtime provisions are applicable to employees 18 years of age or over and to
203 employees 16 or 17 years of age who are not required by law to attend school and are not
204 otherwise prohibited by law from engaging in the subject work. Such employees shall not be
205 employed more than eight (8) hours in any workday or more than 40 hours in any workweek
206 unless the employee receives one and one-half (1.5) times such employee’s regular rate of pay for
207 all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s
208 work. Employment beyond eight (8) hours in any workday or more than six (6) days in any
209 workweek is permissible provided the employee is compensated for such overtime at not less
210 than:
211

212 (a) One and one-half (1.5) times the employee’s regular rate of pay for all hours worked in
213 excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first
214 eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
215

216 (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in
217 any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive
218 day of work in a workweek.
219

220 (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried
221 employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40)
222 of the employee’s weekly salary.
223

224 34. Defendants failed to pay the legal overtime compensation applicable to Plaintiff.
225

226 35. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of an
227 employer[] who violates, or causes to be violated, any provision regulating minimum wages or
228 hours and days of work in any order of the Industrial Welfare Commission or [Labor Code]
229 Section[. . .] 1194.” Labor Code § 558.1(b) provides that an “other person” is “a natural person
230 who is an owner, director, officer, or managing agent” of an employer
231

232 36. On information and belief, Defendant QUOC K TRUONG is and was, at relevant
233 times, an owner, director, officer, or managing agent of Defendants Prosper and violated or
234 caused to be violated the provisions regulating minimum wages or hours and days of work in

Wage Order 5 and Labor Code § 1194. Therefore, Defendant QUOC K. TRUONG is individually liable for these violations.

37. On information and belief, Defendant THAI TRUONG is and was, at relevant times, an owner, director, officer, or managing agent of Defendants Prosper and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 5 and Labor Code § 1194. Therefore, Defendant THAI TRUONG is individually liable for these violations.

38. Plaintiff is entitled to recover unpaid overtime wages, plus interest, for the 3 Years Prior to filing of this lawsuit. On information and belief, this amount includes: (i) \$2,056.80 in unpaid overtime wages; (ii) interest; and (iii) Plaintiff's attorney's Fees and costs, to be determined.

THIRD CLAIM FOR RELIEF Failure to Pay Minimum Wage in Violation of FLSA

39. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

40. For all of his work, Defendants had agreed to pay Plaintiff \$1,200.00 per week (8 full weeks and two partial week weeks). For the last 10 weeks of work, Defendants in fact paid \$300 to Plaintiff for Plaintiff's work. The effective hourly rate for the period referred to above is less than the minimum wage per hour required by law.

41. Defendants failed to pay Plaintiff his earned wages of \$9,831.00 and instead paid him \$0 per hour for this period; Defendants failed to pay Plaintiff the legal minimum wage.

42. Plaintiff is entitled to recover unpaid minimum wages, plus liquidated damages, for the 3 Years Prior to filing of this lawsuit. On information and belief, this amount includes: (i) \$9,831.00 in regular unpaid minimum wages; (ii) liquidated damages in the amount of \$9,831.00; and (iii) Plaintiff's attorney's Fees and costs, to be determined.

FOURTH CLAIM FOR RELIEF Violation of Cal. Lab. Code 1194 and Wage Order 5 - Failure to Pay Minimum Wages

43. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

44. California Labor Code Section 1194(a) provides:

"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Further Wage Order 5, Section 4(B) provides:

282
 283 “Minimum Wages. Every employer shall pay to each employee, on the established payday for
 284 the period involved, not less than the applicable minimum wage for all hours worked in the
 285 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”
 286

287 45. California Labor Code Section 1194.2(a) provides:
 288

289 “In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment
 290 of a wage less than the minimum wage fixed by an order of the commission or by statute, an
 291 employee shall be entitled to recover liquidated damages in an amount equal to the wages
 292 unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to
 293 authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit
 294 may be filed for liquidated damages at any time before the expiration of the statute of limitations
 295 on an action for wages from which the liquidated damages arise.”
 296

297 46. For all of his work, Defendants agreed to pay Plaintiff \$10,131.34 (\$1,200 per week).
 298

299 47. For all of his work, Defendants in fact paid \$300 to Plaintiff for Plaintiff’s work.
 300

301 48. The effective hourly rate for the period referred to above is \$0 per hour.
 302

303 49. Defendants failed to pay Plaintiff his earned wages of \$9,831.00 and instead paid him
 304 \$0 per hour for this period; Defendants failed to pay Plaintiff the legal minimum wage.
 305

306 50. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of an
 307 employer[] who violates, or causes to be violated, any provision regulating minimum wages or
 308 hours and days of work in any order of the Industrial Welfare Commission or [Labor Code]
 309 Section[. . .] 1194.” Labor Code § 558.1(b) provides that an “other person” is “a natural person
 310 who is an owner, director, officer, or managing agent” of an employer
 311

312 51. On information and belief, Defendant QUOC K. TRUONG is and was, at relevant
 313 times, an owner, director, officer, or managing agent of Defendants Prosper and violated or
 314 caused to be violated the provisions regulating minimum wages or hours and days of work in
 315 Wage Order 5 and Labor Code § 1194. Therefore, Defendant QUOC is individually liable for these
 316 violations.
 317

318 52. On information and belief, Defendant THAI TRUONG is and was, at relevant times,
 319 an owner, director, officer, or managing agent of Defendants Prosper and violated or caused to
 320 be violated the provisions regulating minimum wages or hours and days of work in Wage Order
 321 5 and Labor Code § 1194. Therefore, Defendant THAI is individually liable for these violations
 322

323 53. Plaintiff is entitled to recover unpaid minimum wages, plus liquidated damages, for
 324 the 3 Years Prior to filing of this lawsuit. On information and belief, this amount includes: (i)
 325 \$9,831.00 in regular unpaid minimum wages; (ii) liquidated damages in the amount of \$9,831.00;
 326 and (iii) interest on the owed wages; and (iv) Plaintiff’s attorney’s Fees and costs, to be
 327 determined.
 328

FIFTH CLAIM FOR RELIEF

Waiting Time Penalties in Violation of the California Labor Code

54. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

55. The California Labor Code applied to Plaintiff's employment with Defendants at all times relevant herein.

56. California Labor Code Section 203 provides:

"If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

57. Plaintiff's last day of work was in September 2022.

58. Defendants willfully failed to pay Plaintiff her/his wages due after Plaintiff's employment with Defendants terminated.

59. California Labor Code §§ 201 and 202 mandates that an employer pay its employees all earned wages immediately upon discharge or within 72 hours of the employee's resignation. California Labor Code § 203 authorizes an employee to recover waiting time penalties in an amount equal to the employee's daily wages for up to thirty (30) days if an employer willfully fails to pay any wages earned and due to the employee within the timeframes required by Labor Code §§ 201 and 202.

60. At all relevant times during his employment, Defendants willfully failed to pay Plaintiff all minimum, overtime, and/or double-time wages due as set forth in the California Labor Code and Wage Order. Defendants willfully failed to pay Plaintiff all wages owed to her immediately upon her discharge, and such earned wages remain unpaid, in violation of the Labor Code. Plaintiff has repeatedly demanded that Defendants pay her owed wages, verbally and in writing. To date Defendants have willfully and intentionally refused, and continue to refuse, to pay Plaintiff her/his owed wages in violation of the California Labor Code.

61. Pursuant to California Labor Code § 203, Plaintiff is entitled to waiting time penalties in an amount equal to thirty (30) days' wages, in the amount of \$4,800.00, plus attorneys fees and costs, and interest.

SIXTH CLAIM FOR RELIEF

Violations of California Business and Professions Code - Unfair Competition Law

62. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

63. At all times relevant herein through Defendants' acts and omissions alleged herein, Defendants committed unlawful acts that violated Business and Professions Code §§ 17200 et seq.

64. Defendants' unlawful acts included violating the California Labor Code, Wage Order 5, and General Minimum Wage Order, as alleged herein, including Labor Code §§ 1194, 201-3, 1197.5, 226, and 1185.

65. Defendants' violations of these statutes, regulations, and ordinances independently and separately constitute an unlawful business practice within the meaning of Business and Professions Code §§ 17200 et seq.

66. As a result of the aforementioned acts, Plaintiff has lost and continues to lose money or property, and has suffered and continues to suffer injury in fact.

67. Plaintiff is entitled to restitution pursuant to Business and Professions Code §§ 17203 and 17208 for, among other things, all unpaid wages, and interest since four (4) years prior to filing of the Complaint.

68. Plaintiff is informed and believes, and based upon such information and belief alleges, that by engaging in the unfair and unlawful business practices complained of herein, Defendants lowered their labor costs and thereby obtained a competitive advantage over law-abiding employers with which they compete.

69. Plaintiff takes upon herself the enforcement of the aforementioned laws and lawful claims. Enforcement of California's laws is in the public interest. There is a financial burden incurred in pursuing this action. Plaintiff therefore seeks recovery of attorney's fees as provided by Code of Civil Procedure § 1021.5.

70. Plaintiff is entitled to restitution in the amounts unlawfully withheld by Defendants, with interest; and an award of attorneys' fees and costs. Plaintiff is entitled to recover restitution in an amount of at least \$, with interest, attorney's fees and costs, and interest.

SEVENTH CLAIM FOR RELIEF

Violations of California Labor Code - Failure to Authorize and Permit Paid Rest Periods or Pay Missed Rest Period Premiums - Cal. Labor Code §§ 226.2 and 226.7; IWC Wage Order No. 4-2001 § 12

71. Labor Code § 226.2(a)(1) states that "employees shall be compensated for rest and recovery periods.... separate from any piece-rate compensation."

72. Wage Order No. 4-2001 § 12(A) provides:

"Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total

daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

73. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

74. During the relevant period, Plaintiff regularly worked more than 11 consecutive hours in a workday. However, Defendants did not compensate them for their time spent on rest breaks separately and apart from the regular rate, as required under Labor Code § 226.2.

75. Defendant also regularly failed to authorize and permit Plaintiff to take paid off-duty rest breaks by requiring him/her to remain available for work at all times during his work day, in violation of Wage Order No. 4-2001 § 12.

76. As a result of Defendant's policies and practices, Plaintiff was not authorized and permitted to take compliant rest breaks or meal breaks, and is entitled to recover one additional hour of pay at the employee's regular rate of compensation for each instance in which Defendants failed to authorize and permit him to take paid rest periods as required under Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

77. Working 10 hour days, Plaintiff was entitled to 2 rest breaks and 2 meal break; Defendants failed to provide Plaintiff these meal and rest breaks.

78. Plaintiff is entitled to 1 hour of regular pay, for each of Defendants' violations of California's rest break and meal break laws, for the three years prior to this complaint. Plaintiff is entitled to \$3,993.62 in damages.

EIGHTH CLAIM FOR RELIEF

Failure to Issue Accurate Itemized Wage Statements [Labor Code §§ 226(a), (e); 226.2]

79. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

80. During the Wage Statement Subclass Period, Defendant failed to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code § 226(a) by failing to list on the wage statements (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rate in effect during the pay period, and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(1), (2), (5), and (9).

81. Defendant also failed to itemize the total number of hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period, as required under Labor Code § 226.2.

82. Wage Statement Subclass Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

83. The California Labor Code §§ 226(e)(1) provides:

"An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

84. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a) described above, Wage Statement Subclass Members are entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, for each incomplete and/or inaccurate wage statement issued to them, up to an amount not exceeding an aggregate penalty of \$4,000 for each Wage Statement Subclass Member, pursuant to Labor Code § 226(e).

85. Plaintiff, on behalf of herself and all other Wage Statement Subclass Members, requests relief as described below.

DECLARATORY RELIEF ALLEGATIONS

86. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference.

87. A present and actual controversy exists between Plaintiff and Defendants concerning their rights and respective duties. Plaintiff contends that Defendants violated his/her rights under the FLSA, California Labor Code, California Business and Professional Code, and the Wage Order 5, General Minimum Wage Order. Plaintiff is informed and believes and thereon alleges that Defendants deny any liability. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties. Declaratory relief is therefore necessary and appropriate.

88. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful and unfair business practices and acts, and is therefore authorized to pursue injunctive relief against Defendants that is necessary to prevent further unfair business practices and acts.

89. Defendants acted or failed to act as herein alleged with malice or reckless disregard to the protected rights of Plaintiff, and Plaintiff is thus entitled to recover punitive damages in an amount to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendants as follows:

1. A declaratory judgment that Defendants' actions complained of herein have violated Plaintiff's rights under the FLSA, the California Labor Code, California Business and Professional Code, and the Wage Order 5, General Minimum Wage Order;

2. Unpaid minimum wages, unpaid wages at regular hourly rate, overtime premium wages, and other compensation denied or lost to Plaintiff to date by reason of Defendants' unlawful acts, according to proof;

3. Liquidated damages in an amount equal to minimum wages unlawfully unpaid;

4. Liquidated damages in an amount equal to overtime wages unlawfully unpaid;

5. Waiting time penalties under Labor Code § 203 for failure to pay wages due upon separation, according to proof;

6. General, compensatory, and special damages according to proof;

7. Exemplary and punitive damages according to proof; and

8. Interest accrued on Plaintiff's damages, including pre- and post-judgment interest, and an upward adjustment for inflation, under Labor Code § 218.6;

9. Reasonable attorney's fees and costs of suit pursuant to 29 U.S.C. § 216 (b), Labor Code § 1194 (a), Cal. Code of Civ. Proc. § 1021.5, and other laws;

10. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial as provided by Rule 38 (a) of the Federal Rules of Civil Procedure.

/s/ James M. Dore

James M. Dore - State Bar No. 343860

JUSTICIA LABORAL, LLC.

Attorneys for Plaintiff

6232 N. Pulaski Rd. Suite 300, Chicago, IL 60646

P: (773) 415-4898; E: jdore@justicialaboral.com